IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 23RD MAY 2007 / 2ND JYAISHTA 1929

Crl.MC.No. 1614 of 2007()

PETITIONER: 2ND ACCUSED

SIVADAS.P.K., AGED 46 YEARS,
PALARA HOUSE, EZHACHERY P.O., KOTTAYAM DISTRICT.

BY ADV. SMT.DAISY A.PHILIPOSE

RESPONDENTS:
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1. STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

2. CIRCLE INSPECTOR OF EXCISE, PALA.

BY PUBLIC PROSECUTOR SRI.GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 23/05/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

Crl.M.C.No.1614 of 2007

Dated this the 23rd day of May, 2007

ORDER

Against the petitioner, an occurrence report has been filed alleging commission of offences punishable under the Kerala Abkari Act. 167 litres of indian made foreign liquor were seized allegedly from a premises in the possession of the petitioner. According to the petitioner, he is not in possession of the premises from which the alleged seizure was effected. According to him, it was seized from a room which was in the possession of another person under Annexure-A3 rent deed produced in this proceedings. The officials are incorrectly/wrongly assuming that the premises are in the possession of the petitioner and are proceeding against him for serious offences allegedly committed by the person in possession. The petitioner has not been arrested so far. He has already sought anticipatory bail before this Court.

2. The identity of the person in possession of the premises from where recovery was effected is certainly a crucial input, which any Investigator worth his salt, must enquire/investigate into and ascertain before filing the final report. In the facts and circumstances of this case, I am of the opinion that it would be presumptuous on the part of this Court to accept Annexure-A3 produced by the petitioner

as the gospel truth and quash the proceeding against the petitioner on that sole ground. Such a conclusion cannot obviously be taken at this stage by this Court.

3. Needles to say, the Investigator must and shall consider the contention of the petitioner that the petitioner is not in possession of the premises from where the recovery was effected and that it stands in the possession of another person as per documents which are allegedly unimpeachable. That contention will be considered by the Investigating Officer and I find no necessity to issue any specific directions in the matter. At any rate, powers under Section 482 Cr.P.C cannot and need not be invoked to quash the occurrence report or to interfere with the enquiry/investigation that is presently being conducted.

4. This Crl.M.C is, in these circumstances, dismissed with the above observations.

(R.BASANT, JUDGE)

rtr/-